'Oswald' as Imagined by ABC-TV

By JOHN J. O'CONNOR

A muddling of fact and fiction takes a giant tumble forward this weekend as ABC presents "The Trial of Lee Harvey Oswald." This is the television film that asks the question: If Oswald had lived to stand trial for the 1963 assassination of John F. Kennedy, would he have been found guilty or innocent? Further, if guilty, did he act alone or as part of a conspiracy? To help the audience decide on these "facts," the production adopts the fiction that Oswald was not killed by Jack Ruby. That astonishing scene, carried live on national television, is now reduced to Oswald being momentarily startled by a photographer's flashbulb.

Sitting in a bulletproof glass case, Oswald does go to trial, in 1964, while lawyers for the defense and prosecution frantically track down solid leads and seemingly wild speculations. Oswald's own past, especially his marriage to Marina, a Russian, is traced largely through flashbacks.

The trial is brought to a conclusion, but ABC is not yet disclosing the film's ending. That won't be revealed until Sunday evening. (The four-hour production is being shown in two parts, tonight and Sunday, from 9 to 11.) In addition, the tens of millions of viewers will be asked to mail in ballots, published in the current TV Guide, with their own verdicts. The tabulated results will be announced next Friday morning on ABC's "Good Morning, America." The wiles of marketing strategists recognize no bounds.

Putting the verdict aside, then, we are left with an extraordinarily clever and disturbing mixture of incontrovertible fact, feasible conjecture, unsubstantiated rumor and outright distortion. Much of the "evidence" has only been uncovered in recent years in the wake of Watergate and revelations about close ties between the Central Intelligence Agency and anti-Castro Cubans. It is extremely unlikely that the same information would have been available in 1964.

But beyond this awkward technicality, and beyond the device of wholly fictional context, "The Trial of Lee Harvey Oswald" is a not terribly subtle polemic masquerading as an exercise in objective justice. Richard Freed, the producer, who has been trying to sell the project since 1965, has found that "now the public was willing to re-examine issues that they might previously have regarded as closed."

In effect, Vietnam and Watergate have made compulsive skeptics of us all. That in itself may not be bad but it also need not make us uncritically gullible consumers of the worst that can be imagined. Despite all the new information that has come to light about the C.I.A., the Federal Bureau of Investigation, anti-Castroites and the Mafia, no conclusive case has been gathered to prove that Oswald didn't act alone. The conspiracy theory is intriguing, even seductive, but it remains unproven.

Robert E. Thompson's script obviously reflects long and careful research into official records, but the writer concedes that "essentially, I used a dramatist's best tools, intuition and empathy, immersing myself in the period and the participants." And there, precisely, is the contemporary rub. How much are intuition and empathy to be trusted in the portrayal of supposed fact? At the moment, as personal journalism rides the crest of popular fashion, they are indeed admired and rewarded. Truth is relative, we are told, requiring great leaps of imagination in order to be glimpsed at all. One magazine paid Norman Mailer a reportedly hefty sum for his highly speculative luminations on the Kennedy assassination. Why shouldn't television indulge in the same game?

Well, as noted, in this case television is pretending to be in the business of objective truth when the finished product is very nearly as manipulating and speculative as Mr. Mailer's essay. Hundreds of minor production details can be marshaled for illustration, but a general comparison of the prosecutor and defense attorney characterizations should suffice.

Both men are capable, both are competitive and tough. But, in the end, the prosecutor (played by Ben Gazzara), while establishing that Oswald had the method, means and opportunity to commit the crime by himself, cannot find a motive. Finally, he falls back on a theory of sexual jealousy, that Oswald became infuriated when Marina refused to go to bed with him and insisted on watching Kennedy's arrival in Texas the day before the assassination. The theory leaves much to be desired.

Meanwhile, the defender (Lorne Greene), unearths links between Oswald and the C.I.A., F.B.I. and assorted Cubans, and is convinced that the accused was set up as a "patsy" by one or more groups. Oswald admits nothing, but when the lawyer shows him a newspaper headline about a Mafia figure being shot in Miami, he winces noticeably and says: "There's no immunity for me. They'd . . ."

They'd? Who? The possibilities are numerous.

Elsewhere the distortions range from petty to serious. A Cuban woman, who says she saw Oswald with some Mafia figures, is given some prominence, but the script fails to note that she later was placed in a mental institution. And, at one point, the prosecution is seen getting a call from "President Johnson" with the evident warning to keep the investigation out of certain areas. There is no evidence that Lyndon B. Johnson interfered in any way with investigations of the assassination.

Apart from these and many other instances of tinkering with facts, the production sometimes becomes unnecessarily titillating. A reconstruction of some home-movie footage of the assassination — the famous "Zapruder film"—is shown several times to no apparent purpose, except possibly to get a close-up of a juror with a large tear running down her face. At one point, the trial judge observes that "this case demands extraordinary latitude." So does this television film. The audience may vote as it wants, but the question of Lee Harvey Oswald has only been exploited, not answered.

Television, with its programming mix of electronic journalism and popular entertainment, has a special obligation to distinguish clearly between fact and fiction. The medium cannot afford to indulge ambivalently in "what if" hypotheses. In the instance of this ABC production, the net effect is a disservice to an audience that is likely to be left either misled or confused. An-

Lorne Greene and John Pleshette in "The Trial of Lee Harvey Oswald a four-hour production to be shown in two parts, tonight and Sunday on ABC, from 9 to 11.

other treatment of Oswald, pared by CBS, contends it c fictional material and will be to the scrutiny of CBS News curacy check. Comparison sh valuable and perhaps provoc